



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

Agency: Department of Social and Health Services, Economic Services Administration

- ☒ Preproposal Statement of Inquiry was filed as WSR 06-14-043; or
☐ Expedited Rule Making--Proposed notice was filed as WSR _____; or
☐ Proposal is exempt under RCW 34.05.310(4).

- ☒ Original Notice
☐ Supplemental Notice to WSR _____
☐ Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)

WAC 388-410-0020, What happens if I get more food assistance benefits than I am supposed to get?
WAC 388-410-0025, Am I responsible for an overpayment in my assistance unit?
WAC 388-410-0030, How does the department calculate and set up my Basic Food overpayment?
WAC 388-410-0033, How and when does the department collect a food assistance overpayment?

Hearing location(s):

Blake Office Park East – Rose Room
4500 – 10th Ave. SE
Lacey Washington
(One block north of the intersection of Pacific Ave.
SE and Alhadeff Lane, behind Goodyear Tire. A
map or directions are available at
<http://www1.dshs.wa.gov/msa/rpau/docket.html> or
by calling 360-664-6097)

Date: **September 26, 2006** Time: **10:00 a.m.**

Submit written comments to:

Name: DSHS Rules Coordinator
Address: PO Box 45850, Olympia WA, Olympia, WA 98504
Delivery: 4500 – 10th Ave. SE, Lacey, Washington
e-mail: fernaax@dshs.wa.gov fax: (360) 664-6185
by **5:00 p.m. on September 26, 2006**

Assistance for persons with disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by September 22, 2006
TTY (360) 664-6178 or phone (360) 664-6097 or by e-mail at schilse@dshs.wa.gov

Date of intended adoption: No earlier than September 27, 2006 (Note: This is **NOT** the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

To update rules on establishing and collecting overpayments for Basic Food and the Washington Combined Application Project (WASHCAP) to be consistent with federal requirements for the Food Stamp Program under 7 CFR 273.18, Claims against households.

Reasons supporting proposal:

The U.S. Department of Agriculture, Food and Nutrition Service adopts regulations for states to administer the Food Stamp program. The amendments under this filing are to comply with federal requirements on claims against households as required under 7 CFR 273.18.

Statutory authority for adoption: RCW 74.04.050; 74.04.055; 74.04.057; 74.04.510; 74.08.090;

Statute being implemented: RCW 74.04.050; 74.04.055; 74.04.057; 74.04.510; 74.08.090

Is rule necessary because of a:

Federal Law? ☒ Yes ☐ No
Federal Court Decision? ☐ Yes ☒ No
State Court Decision? ☐ Yes ☒ No

If yes, CITATION: 7 CFR 273.18

DATE

8/23/06

NAME (type or print)

Andy Fernando

SIGNATURE

TITLE

Manager, Rules and Policies Assistance Unit

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

AUG 23 2006

TIME 9:30 AM
WSR 06-17-176 PM

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization)

Department of Social and Health Services

- ☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... John Camp	1009 College SE, Lacey, WA 98504	(360) 725-4616
Implementation..... John Camp	1009 College SE, Lacey, WA 98504	(360) 725-4616
Enforcement..... John Camp	1009 College SE, Lacey, WA 98504	(360) 725-4616

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ()

fax ()

e-mail

☒ No. Explain why no statement was prepared.

These proposed rules do not have an economic impact on small businesses. The proposed amendments and only affect DSHS clients by establishing eligibility rules incorporating federal requirements for establishing and collecting overpaid benefits provided under the Washington Basic Food Program and WASHCAP food assistance program. The rule impacts whether or not persons who received more benefits than they were entitled to receive have an overpayment and how the department collects overpaid benefits.

Is a cost-benefit analysis required under RCW 34.05.328?

☐ Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone ()

fax ()

e-mail

☒ No: Please explain: These amendments are exempt as allowed under RCW 34.05.328(5)(b)(vii) which states in-part, "[t]his section does not apply to....rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." These rules incorporate federal requirements for how, based on client eligibility, the department establishes and collects overpaid benefits from the Washington Basic Food Program and WASHCAP food assistance consistent with Title 74 RCW and Title 7 CFR Part 273.18.

AMENDATORY SECTION (Amending WSR 02-06-090, filed 3/1/02, effective 4/1/02)

WAC 388-410-0020 What happens if I ~~((get))~~ receive more ~~((food assistance))~~ Basic Food or WASHCAP benefits than I am supposed to ~~((get))~~ receive? (1) If you ~~((get))~~ receive more ~~((assistance))~~ Basic Food or WASHCAP benefits than you were supposed to ~~((get))~~ receive, your assistance unit (AU) has ~~((a food assistance))~~ an overpayment. There are three types of ~~((food assistance))~~ overpayments:

(a) **Administrative error overpayment:** When you received too many benefits because the department made a mistake.

(b) **Inadvertent household error overpayment:** When you received too many benefits because you made a mistake or didn't understand what you were supposed to do.

(c) **Intentional program violation (IPV) overpayment:** When you received too many benefits because you broke a food stamp rule on purpose. If you have an IPV, you could be disqualified from receiving ~~((food assistance))~~ Basic Food or WASHCAP benefits under chapter 388-446 WAC.

(2) ~~((The department))~~ We must ~~((set up and start collecting))~~ discover an overpayment within certain time frames for us to establish and collect an overpayment. If we do not ~~((meet both of the time frames))~~ discover that you received too many benefits within the timeframe described below based on the type of overpayment ((your AU has)), we will not set up an overpayment:

(a) Administrative error overpayment:	(b) Inadvertent household error overpayment:	(c) Intentional program violation overpayment:
We must discover the overpayment within twelve months of the date you were overpaid ((; and)) .	We must discover the overpayment within twenty-four months of the date you were overpaid ((; and)) .	We must discover the overpayment within seventy-two months of the date you were overpaid ((; and)) .
((We must mail your household a recovery demand letter and overpayment calculation within twenty-four months of the date that we discovered you were overpaid.))	((We must mail your household a recovery demand letter and overpayment calculation within twenty-four months of the date that we discovered you were overpaid.))	((We must mail your household a recovery demand letter and overpayment calculation within twenty-four months of the date that we discovered you were overpaid.))

AMENDATORY SECTION (Amending WSR 02-06-090, filed 3/1/02, effective 4/1/02)

WAC 388-410-0025 Am I responsible for an overpayment in my

assistance unit? If your assistance unit (AU) (~~gets~~) received more (~~food assistance~~) Basic Food or WASHCAP benefits than it was supposed to (~~get~~) receive, your AU has an overpayment. If you have an overpayment, (~~the department determines~~) we determine the amount you were overpaid and (~~sets~~) set up a claim to recover this overpayment.

(1) We set up an overpayment for the full amount your AU was overpaid for every adult AU member at the time your AU was overpaid.

(2) Each adult member is responsible for the whole overpayment until we recover the entire amount of the overpayment. We do not collect more than the amount your AU was overpaid.

(3) If we determine you are responsible for an overpayment, you are responsible for the overpayment even if you are now in a different AU than you were when you had the overpayment.

AMENDATORY SECTION (Amending WSR 03-21-027, filed 10/7/03, effective 12/1/03)

WAC 388-410-0030 How does the department calculate and set up my Basic Food or WASHCAP overpayment? (1) (~~The department calculates~~) We calculate the amount of your Basic Food or WASHCAP overpayment by counting the difference between:

- (a) The benefits your assistance unit (AU) received; and
- (b) The benefits your AU should have received.

(2) To calculate the benefits your AU should have received, we determine what we would have authorized if we:

- (a) Had correct and complete information; and
- (b) Followed all the necessary procedures to determine your AU's eligibility and benefits.

(3) If you did not report your earned income as required under WAC 388-418-0005 and WAC 388-418-0007, you do not (~~get~~) receive the earned income (~~disregard~~) deduction under WAC 388-450-0185 when we calculate your overpayment amount.

(4) If we paid you (~~were underpaid~~) too few Basic Food or WASHCAP benefits for a period of time, we will use (~~these benefits~~) the amount we underpaid your AU to reduce your overpayment if:

(a) We have **not** already issued you benefits to replace what you were underpaid; and

(b) We have **not** used this amount to reduce another overpayment.

(5) We **must** set up an inadvertent household error or administrative error overpayment if:

(a) We discovered the overpayment through the federal quality control process;

(b) You currently (~~get~~) receive Basic Food or WASHCAP benefits; or

(c) The overpayment is over one hundred twenty-five dollars and you do not currently (~~get~~) receive Basic Food or WASHCAP benefits.

(6) ~~((We do not set up inadvertent household error or administrative error overpayment if:~~

~~(a) We cannot find the responsible AU members; or~~

~~(b) We have)) If you have an inadvertent household error that we referred ((your inadvertent household error)) for prosecution or an administrative disqualification hearing, we will not set up and start collecting the overpayment if doing so could negatively impact this process.~~

(7) We set up an intentional program violation overpayment based on the results of an administrative disqualification hearing (chapter 388-02 WAC) unless:

(a) Your AU has repaid the overpayment; or

~~(b) ((We cannot find the responsible AU members; or~~

~~(c)) We have referred your inadvertent household error for prosecution and collecting the overpayment could negatively impact this process.~~

AMENDATORY SECTION (Amending WSR 02-06-090, filed 3/1/02, effective 4/1/02)

WAC 388-410-0033 How and when does the department collect a ((food assistance)) Basic Food or WASHCAP overpayment? (1) When we set up an overpayment because you received more Basic Food or WASHCAP benefits than you were supposed to receive, we start to collect the benefits you were overpaid. This includes when we:

(a) Modify an established overpayment to an amount we would not have to set up under WAC 388-410-0030(5); or

(b) Set up an overpayment that we do not have to set up under WAC 388-410-0030(5).

(2) You can repay your overpayment by:

(a) Paying the entire amount at once;

(b) Having us take the amount of your overpayment out of your EBT account;

(c) Making regular ((installments)) payments under ((a payment schedule as specified)) a scheduled repayment agreement as described in subsection ((+3)) (4) of this section; or

(d) Having your current ((food assistance)) Basic Food or WASHCAP benefits reduced.

((+2)) (3) If you have an inactive EBT account and we cancelled ((food assistance)) Basic Food or WASHCAP benefits in the account under WAC 388-412-0025, we use the cancelled ((funds)) benefits to reduce the amount of your overpayment.

((+3)) (4) If your AU currently ((gets food assistance)) receives Basic Food or WASHCAP benefits, you can repay your overpayment by making monthly ((installments that you agree on with the department)) payments. The ((agreement)) payments must be more than we would recover through us reducing your benefits. Your AU or the department can request a change to the agreement if necessary.

((+4)) (5) If you are responsible for repaying an administrative or inadvertent household error overpayment, we automatically reduce your monthly benefits ((if you do not)) unless

you:

- (a) Pay the overpayment all at once;
- (b) Set up a repayment agreement with us; or
- (c) Request a ~~((fair))~~ hearing and continued benefits within ninety days of the date you received your collection action notice.

~~((+5+))~~ (6) If you are responsible for an intentional program violation (IPV) overpayment, you must tell us how you want to repay this overpayment within ten days of the date you ~~((get))~~ receive your collection action notice. If you do not do this, we will reduce your current monthly benefits.

~~((+6+))~~ (7) If you ~~((get))~~ receive ongoing ~~((food assistance))~~ Basic Food or WASHCAP benefits, we can reduce your monthly benefits to repay the overpayment. We do not reduce your first ~~((food assistance))~~ Basic Food or WASHCAP allotment when we first approve your application for ~~((food assistance))~~ benefits.

(a) If you have an administrative or inadvertent household error overpayment, we reduce your benefits by the greater of:

- (i) Ten percent of your monthly benefits; or
- (ii) Ten dollars per month.

(b) If you have an IPV overpayment, we reduce your benefits by the greater of:

- (i) Twenty percent of your monthly benefits; or
- (ii) Twenty dollars per month.

~~((+7+))~~ (8) If you do not meet the terms of a repayment agreement with the department, we automatically reduce your current ~~((food assistance))~~ benefits unless you:

(a) ~~((Catch up with all overdue payments))~~ Pay all overdue payments to bring your repayment agreement current; or

(b) Ask us to consider a change to the repayment schedule.

~~((+8+))~~ (9) If ~~((you no longer get food assistance, we will refer your overpayment for federal collection if the))~~ your overpayment claim is past due for one hundred eighty or more days, we refer your overpayment for federal collection. A federal collection includes reducing your income tax refund, social security benefits, or federal wages. We do not count your overpayment as past due if you:

(a) Repay the entire overpayment by the due date; ~~((or))~~

(b) Have your monthly benefits reduced to repay the overpayment; or

(c) Meet the requirements of your scheduled repayment agreement.

~~((+9+))~~ (10) If you no longer ~~((get food assistance))~~ receive Basic Food or WASHCAP benefits, we can garnish your wages, file a lien against your personal or real property, attach other benefits, or otherwise access your property to collect the overpayment amount.

~~((+10+))~~ (11) We suspend collection on an overpayment if:

- (a) We cannot find the responsible AU members; or
- (b) The cost of collecting the overpayment would likely be more than the amount we would recover.

~~((+11+))~~ (12) We can negotiate the amount of an overpayment if the amount you offer is close to what we could expect to ~~((get))~~ receive from you before we can no longer legally collect the overpayment from you.

~~((+12+))~~ (13) We write off unpaid overpayments and release any related liens when:

- (a) We can not possibly collect any more funds;
 - (b) We agreed to accept a partial payment that left an unpaid balance after this payment; or
 - (c) There is an unpaid balance left after an overpayment case has been suspended for three consecutive years unless a collection may be possible through the Treasury Offset Program.
- ((~~13~~)) (14) If your AU has an overpayment from another state, we can collect this overpayment if the state where you were overpaid does not plan to collect it and they give us the following:
- (a) A copy of the overpayment calculation and overpayment notice made for the client; and
 - (b) Proof that you received the overpayment notice.